

**FISH AND GAME COMMISSION
SUPPLEMENT TO STATEMENT OF EMERGENCY
ACTION**

Emergency Action to Add Section 749.3, Title 14, CCR,
Re: Special Order Relating to Incidental Take of Longfin Smelt
(*Spirinchus thaleichthys*) During Candidacy Period

I. Impact of Regulatory Action:

In the statement of emergency action approved on February 29, 2008, the Commission concluded that adoption of section 749.3, Title 14, California Code of Regulations as an emergency regulation pursuant to Fish and Game Code section 2084 would provide cost savings to state and local agencies as a result of avoiding the expense of obtaining individual incidental take permits from the Department of Fish and Game. However, the Commission has received information from the state's water purveyors that their cost savings could be potentially offset by a loss in revenue from the diminished water supply that could result from imposition of the protective measures outlined in the 2084 regulation. The State Water Contractors (SWC) project a potential loss of 256,000 acre feet (AF) in December and 256,000 AF in January through February if the maximum protective measures outlined in the 2084 regulation are activated. Their projected water losses are in addition to those anticipated as a result of the pumping restrictions in *Kempthorne*¹. The SWC project even higher losses if conditions are dry.

The Department believes that the water costs identified by the SWC are higher than will likely result from the implementation of the 2084 protective measures. The projected SWC water costs assumed that the most restrictive measures of the 2084 would be in place for the maximum amount of time possible under the regulation. In light of conditions this year, while that is possible, it is extremely unlikely that such measures will be required.

¹ In *Natural Resources Defense Council v. Kempthorne*, the United States Eastern District Court issued an Interim Remedial Order Following Summary Judgment and Evidentiary Hearing which required specific limitations on the joint operations of the State Water Project (SWP) and the Federal Central Valley Project (CVP) in order to prevent the extinction of delta smelt until a new delta smelt biological opinion is issued by the United States Fish and Wildlife Service.